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GUY FAIRON

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GUY FAIRON, an Individual,

Plaintiff,

v.

SPOONS BAR & GRILL, a business  
of unknown form; TRAVIS TIRET  
PARTNERSHIP, L.P., a California  
limited partnership; and DOES 1-10,  
Inclusive,

Defendants.

Case No.:

**Complaint for Damages and Injunctive  
Relief for:**

- 1. VIOLATIONS OF THE  
AMERICANS WITH DISABILITIES  
ACT OF 1990, 42 U.S.C. §12181 *et*  
*seq.*; AND**
- 2. VIOLATIONS OF THE UNRUH  
CIVIL RIGHTS ACT, CALIFORNIA  
CIVIL CODE § 51 *et seq.***

1 Plaintiff, Guy Fairon ("Plaintiff"), complains of Defendants Spoons Bar &  
2 Grill, a business of unknown form; Travis Tired Partnership, L.P., a California  
3 limited partnership; and Does 1-10 ("Defendants") and alleges as follows:

4 **PARTIES**

5 1. Plaintiff is an adult California resident. Plaintiff has a Temporary Disabled  
6 Person Parking Placard issued to him by the State of California. Plaintiff is  
7 substantially limited in performing one or more major life activities, including but  
8 not limited to: walking, standing, ambulating and sitting. As a result of these  
9 disabilities, Plaintiff relies upon mobility devices to ambulate. With such  
10 disabilities, Plaintiff qualifies as a member of a protected class under the Americans  
11 with Disabilities Act ("ADA"), 42 U.S.C. §12102(2) and the regulations  
12 implementing the ADA set forth at 28 C.F.R. §§ 36.101 et seq.

13 2. Plaintiff brings this action acting as a "private attorney general" as permitted  
14 under the American with Disabilities Act of 1990 ("ADA") to privatize  
15 enforcement of the ADA without the American tax payer(s) bearing the financial  
16 tax burden for such action.

17 3. Plaintiff is informed and believes and thereon alleges that Defendant Travis  
18 Tired Partnership, L.P., a California limited partnership, owned the property located  
19 at 2601 Hotel Terrace Santa Ana, CA 92705 ("Property") on or around April 25,  
20 2018.

21 4. Plaintiff is informed and believes and thereon alleges that Defendant Travis  
22 Tired Partnership, L.P., a California limited partnership owns the Property currently.

23 5. Plaintiff is informed and believes and thereon alleges that Defendant Spoons  
24 Bar & Grill, a business of unknown form ("Business"), located at the Property in  
25 April 25, 2018.

26 6. Defendant Spoons Bar & Grill, a business of unknown form, operates and  
27 controls the Business located at the Property currently.

28 7. Plaintiff does not know the true names of Defendants, their business

1 capacities, their ownership connection to the subject property and business, or their  
2 relative responsibilities in causing the access violations herein complained of, and  
3 alleges a joint venture and common enterprise by all such Defendants. Plaintiff is  
4 informed and believes that each of the Defendants herein, including Does 1 through  
5 10, inclusive, is responsible in some capacity for the events herein alleged, or is a  
6 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend  
7 when the true names, capacities, connections, and responsibilities of the Defendants  
8 and Does 1 through 10, inclusive, are ascertained.

### 9 JURISDICTION AND VENUE

10 8. This Court has subject matter jurisdiction over this action pursuant to 28  
11 U.S.C. §§ 1331 and 1343(a)(3-4) for violations of the Americans with  
12 Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* ("ADA").

13 9. This court has supplemental jurisdiction over Plaintiff's non-federal claims  
14 pursuant to 28 U.S.C. § 1367, because Plaintiff's Unruh Civil Rights Act  
15 ("UCRA") claims are so related to Plaintiff's federal ADA claims in that they have  
16 the same nucleus of operative facts and arising out of the same transactions, they  
17 form part of the same case or controversy under Article III of the United States  
18 Constitution.

19 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the real  
20 property which is the subject of this action is located in this district and because  
21 Plaintiff's causes of action arose in this district.

### 22 GENERAL ALLEGATIONS

23 11. Plaintiff went to the Business on or about April 25, 2018 to eat.

24 12. The Business is a facility open to the public, a place of public  
25 accommodation, and a business establishment.

26 13. Parking spaces are one of the facilities, privileges and advantages reserved by  
27 Defendants to persons at the property serving the Business.

28 14. Unfortunately, although parking spaces were one of the facilities reserved for

1 patrons, there were no designated parking spaces available for persons with  
2 disabilities that complied with the Americans with Disability Act Accessibility  
3 Guidelines (“ADAAG”) on April 25, 2018.

4 15. Instead of having architectural barrier free facilities for patrons with  
5 disabilities, Defendants have: a built-up curb ramp that projects from the sidewalk  
6 and into the accessible parking area (Section 406.5). Furthermore, the curb ramp is  
7 in excess of the 2% maximum grade allowed by ADAAG specifications (Section  
8 406.1). Therefore, currently, there is no compliant designated disabled parking  
9 serving the Business which is designed for persons with disabilities.

10 16. Subject to the reservation of rights to assert further violations of law after a  
11 site inspection found *infra*, Plaintiff asserts there are additional ADA violations  
12 which affect him personally.

13 17. Plaintiff is informed and believes and thereon alleges Defendants had no  
14 policy or plan in place to make sure that there was a compliant accessible access  
15 parking reserved for persons with disabilities prior to April 25, 2018.

16 18. Plaintiff is informed and believes and thereon alleges Defendants have no  
17 policy or plan in place to make sure that the designated disabled parking for persons  
18 with disabilities comport with the ADAAG.

19 19. The designated disabled parking spaces for use by persons with disabilities  
20 are a tip over, crash, fall hazard or trip hazard because it contains a built-up curb  
21 ramp and cross slopes.

22 20. Plaintiff personally encountered these barriers. These inaccessible conditions  
23 denied the Plaintiff full and equal access and caused him difficulty, humiliation and  
24 frustration

25 21. As an individual with a mobility disability who at times is dependent upon a  
26 wheelchair or other mobility device, Plaintiff has a keen interest in whether public  
27 accommodations have architectural barriers that impede full accessibility to those  
28 accommodations by individuals with mobility impairments.

1 22. Plaintiff is being deterred from patronizing the Business and its  
2 accommodations on particular occasions, but intends to return to the Business for  
3 the dual purpose of availing himself of the goods and services offered to the public  
4 and to ensure that the Business ceases evading its responsibilities under federal and  
5 state law.

6 23. The Defendants have failed to maintain in working and useable conditions  
7 those features required to provide ready access to persons with disabilities.

8 24. The violations identified above are easily removed without much difficulty or  
9 expense. They are the types of barriers identified by the Department of Justice as  
10 presumably readily achievable to remove and, in fact, these barriers are readily  
11 achievable to remove. Moreover, there are numerous alternative accommodations  
12 that could be made to provide a greater level of access if complete removal were  
13 not achievable.

14 25. Plaintiff is being deterred from patronizing the Business and its  
15 accommodations on particular occasions, but intends to return to the Business for  
16 the dual purpose of availing himself of the goods and services offered to the public  
17 and to ensure that the Business ceases evading their responsibilities under federal  
18 and state law.

19 26. Given the obvious and blatant violation alleged hereinabove, Plaintiff  
20 alleges, on information and belief, that there are other violations and barriers in the  
21 site that relate to his disability. Plaintiff will amend the complaint, to provide  
22 proper notice regarding the scope of this lawsuit, once he conducts a site inspection.  
23 However, please be on notice that the Plaintiff seeks to have all barriers related to  
24 his disability remedied. See Doran v. 7-11, 524 F.3d 1034 (9<sup>th</sup> Cir. 2008) (holding  
25 that once a plaintiff encounters one barrier at a site, the plaintiff can sue to have all  
26 barriers that relate to his disability removed regardless of whether he personally  
27 encountered them).

28 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff

1 alleges, on information and belief, that the failure to remove these barriers was  
 2 intentional because: (1) these particular barriers are intuitive and obvious; (2) the  
 3 Defendants exercised control and dominion over the conditions at this location prior  
 4 to April 25, 2018, (3) the lack of accessible facilities was not an accident because  
 5 had the Defendants intended any other configuration, they had the means and  
 6 ability to make the change.

7 28. Without injunctive relief, Plaintiff will continue to be unable to fully access  
 8 Defendants' facilities in violation of Plaintiff's rights under the ADA.

### 9 **FIRST CAUSE OF ACTION**

10 **(Violations of the Americans With Disabilities Act Of 1990, 42 U.S.C. § 12181,**  
 11 ***et seq.* Against All Defendants)**

12 29. Plaintiff re-alleges and incorporates by reference all paragraphs alleged  
 13 above and each and every other paragraph in this Complaint necessary or helpful to  
 14 state this cause of action as though fully set forth herein.

15 30. Under the ADA, it is an act of discrimination to fail to ensure that the  
 16 privileges, advantages, accommodations, facilities, goods, and services of any place  
 17 of public accommodation are offered on a full and equal basis by anyone who  
 18 owns, leases, or operates a place of public accommodation. See 42 U.S.C. §  
 19 12182(a). Discrimination is defined, inter alia, as follows.

20 a. A failure to make reasonable modifications in policies, practices, or  
 21 procedures, when such modifications are necessary to afford goods,  
 22 services, facilities, privileges, advantages, or accommodations to  
 23 individuals with disabilities, unless the accommodation would work a  
 24 fundamental alteration of those services and facilities. 42 U.S.C. §  
 25 12182(b)(2)(A)(ii).

26 b. A failure to remove architectural barriers where such removal is  
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 28 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,



Appendix "D".

- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

31. Any business that provides parking spaces must provide accessible parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991 Standards, parking spaces and access aisles must be level with surface slopes not exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010 Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Here the failure to provide a level access aisle in the designated disabled parking space is a violation of the law and excess slope angle in the access pathway is a violation of the law.

32. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

33. Here, the failure to ensure that accessible facilities were available and ready to be used by Plaintiff is a violation of law.

34. Given its location and options, Plaintiff will continue to desire to patronize the Business but he has been and will continue to be discriminated against due to lack of accessible facilities and, therefore, seeks injunctive relief to remove the barriers.

## SECOND CAUSE OF ACTION

**(Violation of the UCRA, California Civil Code § 51 *et seq.***

**Against All Defendants)**

35. Plaintiff re-alleges and incorporates by reference all paragraphs alleged above and each and every other paragraph in this Complaint necessary or helpful to state this cause of action as though fully set forth herein.

36. California *Civil Code* section 51, *et seq.* guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges, and services of all business establishments of any kind whatsoever. Defendants are systematically violating the UCRA, *Civil Code* section 51, *et seq.*

37. Because Defendants violate Plaintiff's rights under the ADA, they also violated the UCRA and are liable for damages. CAL. CIV. CODE §§ 51(f) and 52(a). These violations are ongoing.

38. Plaintiff is informed and believes and thereon alleges that Defendants' actions constitute intentional discrimination against Plaintiff on the basis of a disability, in violation of the UCRA, *Civil Code* section 51, *et seq.*, because Defendants have been previously put on actual or constructive notice that the Business is inaccessible to Plaintiff. Despite this knowledge, Defendants maintain their premises in an inaccessible form, and Defendants have failed to take actions to correct these barriers.

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**PRAYER**

WHEREFORE, Plaintiff prays that this court award damages provide relief as follows:

1. A preliminary and permanent injunction enjoining Defendants from further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code § 51 *et seq.* with respect to its operation of the Business and Property; Note: Plaintiff is not invoking section 55, *et seq.*, of the California Civil Code and is not seeking injunctive relief under the Disable Persons Act (Cal. C.C. §54) at all.

2. An award of actual damages and statutory damages of not less than \$4,000 per violation pursuant to § 52(a) of the California Civil Code.

3. An additional award of \$4,000.00 as deterrence damages for each violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist. LEXIS 150740 (USDC Cal, E.D. 2016);

4. For reasonable attorneys' fees, litigation expenses, and costs of suit, pursuant to 42 U.S.C. § 12205; California Civil Code § 52.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby respectfully requests a trial by jury on all appropriate issues raised in this Complaint.

DATED: August 10, 2018

**MCFARLIN LLP**

By: 

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Attorneys for Plaintiff  
GUY FAIRON